

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
DECEMBER 11, 2013**

CALL TO ORDER A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Noah Bodman, Gene Shellerud, Jim Heim, Jeff Larsen and Ron Schlegel. Bob Faulkner and Greg Stevens had excused absences. BJ Grieve and Alex Hogle represented the Flathead County Planning & Zoning Office.

There were 26 people in the audience.

APPROVAL OF MINUTES Larsen made a motion, seconded by Shellerud to approve the October 9, 2013 meeting minutes and October 23, 2013 workshop minutes.

On a roll call vote the motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)**

Ken Kalvig, 1830 3rd Ave East, Suite 301, commented on the new business item regarding placement of private land uses such as shooting ranges, motocross courses, multi-party gardens, weddings, airstrips, etc., when these uses are not open to the public, are only for private use by landowner's family and friends, and do not meet the definition of "Business or Commercial Use." He represented people who were directly affected by the Ten Arrows Ranch; an application submitted for a wedding event center and explained some of the issues they experienced. These issues included noise, traffic and late night activities. He gave a history of what his clients had experienced and their concern with weddings being allowed because they were being held for friends and family. He explained what he felt Grieve planned to talk about under new business. He felt a test or criteria should be established to deal with a variety of situations the planning office had encountered. The two part test applied by the planning director was not appropriate in these situations. He summarized different tests which could be used. He reviewed uses permitted in different zoning and how the director could make decisions on a case by case basis. The impacts to the neighbors were the same whether the weddings were for friends and family or paying customers. He theorized several different scenarios for the board concerning things which could be done in lieu of payment for the property. He went on to review in depth other factors which by law should be considered. He gave different options Grieve could follow concerning these situations. He described problems with clarifying friends and family, whether the use was business or personal use and determining customary accessory uses. He was not sure what the planning board could do with the new business item.

Mark Schiltz, 275 Echo Lake Rd, said the activities which took place at the Ten Arrows Ranch last summer changed the nature of the neighborhood. The weddings impacted the neighborhood in the afternoons and evenings with noise and safety. He looked to the county zoning regulations to protect him from the neighbors' activities which directly affected the neighboring residents. He hoped the board would respect the greater good of the neighborhood.

Dan Demars, 1140 McCaffrey Rd, voiced concerns he had about the Ten Arrows Ranch which included alcohol, trespassing, garbage and candles let loose over fields in fire season. The Ten Arrows Ranch was an accident waiting to happen. People turned around in neighboring yards to see where the road went. The facility was not for a residential area.

Nancy Turston, 1310 McCaffery Road, had issues with the Ten Arrows Ranch which included noise, traffic, garbage, alcohol, late nights and Chinese candles. She gave a history of the documentation of complaints, the petition circulated to stop the conditional use permit and the 25-30 letters sent in opposition to the events. She gave a history of the rezoning of the property and stated the impacts were the same whether they were for family and friends or for profit.

Jeff Wade, 300 Echo Lake Rd, had lived in the neighborhood for 40 to 50 years and said there were other places in the county where this wedding event center would be more appropriate. He encouraged the board to give the issue a lot of thought before it acted.

**TRUMBLE
CREEK
CROSSING
PHASES 2-5
(FPP-13-04)**

A request by Northwest Dev Group, LLC. for Preliminary Plat approval of Trumbull Creek Crossing, Phases 2-5, a one-hundred thirteen (113) lot residential subdivision planned to be developed in four separate phases. Currently zoned SAG-10 Suburban Agricultural within the Evergreen Zoning District, the 36.33 acre subject property is presently undergoing review for a zoning map amendment to R-4 Two-Family Residential which would provide the basis for the requested density. All lots would be served by a proposed extension of the Evergreen Water & Sewer District's public water and sewer systems. Primary access to the subdivision would be from Mountain View Drive via East Reserve Drive and US Highway 2 for the first two phases (access for 44 lots through existing Trumbull Creek Crossing Phase 1 Subdivision), and a proposed off-site road extending north from the subdivision boundary to Rose Crossing would be developed with the third phase to provide an additional primary access from Rose Crossing via US Highway 2 to serve the subdivision at full build-out. Located east of US Highway 2 on property situated between East Reserve Drive and Rose Crossing.

STAFF REPORT

Hogle reviewed Staff Report FPP-13-04 for the Board.

**BOARD
QUESTIONS**

Larsen and Hogle discussed if the housing was for single family housing.

**APPLICANT
PRESENTATION**

Erica Wirtila, Sands Surveying, represented the applicant. She reviewed the history of the zone change and the application before the board. She discussed the timeline for build out which was ten to fifteen years, the layout of phase one and the compliance of the application with various policies and neighborhood plans. She continued to explain the boundary of the Evergreen Water and Sewer District, the will serve letter from Evergreen Water and Sewer District, the resolution of the inter local cooperation, a picture tour of the existing phases and what the future phases would look like. She explained the layout of the phase which included open area, common areas, and the phasing plan. She introduced the technical representatives which had worked on the application, which were Andy Hyde from Carver Engineering, Roger Noble from Applied Water, Rob Smith from A2Z Engineering and Tom Bowen who was the primary builder for phase one and would be the primary builder for the rest of the phases.

Heim and Wirtila discussed where the walking paths would be located in the phases.

Tom Bowen, Bighorn Development, 140 Second Avenue West, gave a history of the housing market in the valley and in the first phase of the development and said the area was a beautiful area. They were phasing to hedge against the market.

**BOARD
QUESTIONS**

None.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Hickey-AuClaire clarified the board had time to read the written public comment and the process for the members of the public.

There was no verbal public comment.

**APPLICANT
REBUTTAL**

Wirtila commented on a written public comment which indicated the development would overburden the public schools. She read a letter from Gary White, the superintendent of Helena Flats School, which indicated overburdening would not be an issue.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Heim asked if the commissioners had not yet made a decision on the zone change, how could the board make a recommendation on a subdivision which did not fit the current zoning.

Grieve said all that was needed was a condition concerning the zone change.

**MAIN MOTION
TO ADOPT F.O.F.
(FPP-13-04)**

Larsen made a motion seconded by Heim to adopt staff report FPP-13-04 as findings-of-fact.

**BOARD
DISCUSSION**

The board, staff, Rob Smith from A2Z Engineering and Andy Hyde from Carver Engineering discussed at length how the amount of traffic phases two and three would generate before the extension road would be built was addressed.

**SECONDARY
MOTION TO
(Amend F.O.F. #14)**

Bodman made a motion seconded by Larsen to amend finding-of-fact #14 to read:

14. Portions of the subject property are currently mapped as Zone A 100-year floodplain. There is no anticipated impact to floodplain because proposed building sites and subdivision improvements would be located outside of the ~~0.1%~~ 1% annual chance flood area (100-year floodplain) with the imposition of a condition requiring the elevation and area delineated as Special Flood Hazard area be shown as 'No Build Zone' on the face of the final plat.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Amend F.O.F. #14)**

On a roll call vote the motion passed unanimously.

**ROLL CALL TO
ADOPT F.O.F.
(FPP-13-04)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FPP-13-04)**

Heim made a motion seconded by Schlegel to adopt Staff Report FPP-13-04 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Larsen and Hogle discussed the reasons the secondary access was not required during phase one, which included the reasons they had a public fire suppression system, was served with fire hydrants, had paved access and was in close proximity to fire stations and emergency service providers.

SECONDARY

Heim made a motion seconded by Larsen to amend Condition #23 to read:

MOTION TO
(Amend
CONDITION #23)

23. A ~~Stop signs~~ shall be installed at the intersections of ~~the internal roads,~~
~~and at the intersection of the off-site road extending to~~ Rose Crossing
~~and the off-site road extending to Rose Crossing.~~ *The appropriate*
traffic control signs required at the intersections of the internal roads
shall be determined by the Design Engineer in consultation with
Flathead County Sherriff's Department and Flathead County Road
Department, and shall be installed in accordance with the standards
outlined in Section 2-05 of the *Flathead County Minimum Standards for*
Design and Construction, as applicable to ensure safe and efficient
traffic flow to, from, and within the proposed subdivision. [Sections
4.7.16, 4.7.17 FCSR]

BOARD
DISCUSSION

None.

ROLL CALL TO
(Amend
CONDITION #23)

On a roll call vote the motion passed unanimously.

BOARD
DISCUSSION

The board and Hyde discussed the details of the inter-local agreements between
Evergreen and Kalispell regarding sewer, Resolution 5103 and the fact the
agreements will eventually change.

Heim understood the concern with how agreements change over time and how
that affected the conditions on applications in the future.

Schlegel and Hyde discussed if there was a possibility of there not being an
inter-local agreement between Kalispell and Evergreen after 2015 and what
would happen in that scenario.

Bodman and staff discussed how the county would handle the situation if the
inter-local agreement expired before all the connections were established with
the phases in the application.

SECONDARY
MOTION TO
(Amend
CONDITION #20)

Heim made a motion seconded by Larsen to amend Condition #20 to read:

20. The proposed extensions and connections of the public water and sewer
systems shall comply with the standards and requirements of the
Evergreen Water and Sewer District ~~and shall be~~ in accordance with the
specific terms and conditions established in ~~any~~ Interlocal Agreement(s)
between the City of Kalispell and Flathead County Water and Sewer
District No. 1 ~~(Evergreen)~~ and ~~the terms of usage~~ established ~~by either~~
~~the interim 2006 policy defined in City of Kalispell~~ Resolution No.
5103, ~~which is still in effect December 2013, or whatever policy might~~
~~later be adopted by the City of Kalispell to replace Resolution No. 5103.~~

A letter from the District stating that the water and sewer improvements for each subdivision phase meet the District requirements shall be submitted with the application for Final Plat of each phase. [Sections 4.7.20, 4.7.21 FCSR]

**ROLL CALL TO
(Amend
CONDITION #20)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FPP-13-04)**

On a roll call vote the motion passed unanimously.

**GLACIER
GATEWAY RV
RESORT
(FPP-13-05)**

A request by Toby & Jessica Gilchrist with technical assistance from TD&H Engineering for Preliminary Plat approval of Glacier Gateway RV Resort, a 62 space Recreational Vehicle Park on 13.35 acres which is undergoing review as a 'Subdivision for Lease or Rent'. The applicant is proposing to establish public water and sewer systems to serve the facility. Access would be directly from US Highway 2 East and the application includes a Variance request to Section 4.7.17(a) regarding paving of portions of the internal roadway. The property is located at 7605 US Highway 2 East approximately 1 mile north of the intersection of MT Highway 206 and US Highway 2 East.

STAFF REPORT

Hogle reviewed Staff Report FPP-13-05 for the Board.

**BOARD
QUESTIONS**

Larsen and Hogle discussed the location of a fence on the final plat, how close the office on the property was to the boundary line, where the trail could be placed, the lack of conditions for a fence or vegetative buffer on the property boundary lines, how that concern could be addressed, what the existing vegetation looked like in the area and routes the bike path easements could take.

Heim and Hogle discussed if the bike path could be place in the highway right-of-way, where the path would be located on neighboring property, the benefits of a separated path from the road and trail projects in the area.

Bodman and Hogle discussed if there was any conflict between the defensible space standards for fire safety and vegetative buffers.

**APPLICANT
PRESENTATION**

Toby Gilchrist, 270 Battle Ridge Drive, gave his history in the valley and a history of how the application came to be. He recounted the benefits of the application which included money to the local economy and the ability to accommodate larger RVs. They had not proposed much on the line of a fence due to conflicting concerns of the neighbors. They did plan on installing a fence and wanted to hear what the public said tonight concerning the issue. They also planned to establish a ridged set of rules and standards for the park, especially concerning quiet hours. He reviewed what had been done with technicians concerning the layout of the park and thanked the board for their time.

**BOARD
QUESTIONS**

None.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Hickey-AuClaire clarified the board had time to review the written comment before them.

Lisa Lundey, 1688 Monte Vista Drive was against the application.

Ellen Joy Hoerner 1651 Monte Vista Drive, was against the application.

Lourell Tilton, 1375 Berne Road, was against the application.

Don Hoerner, 1651 Monte Vista Drive, was against the application.

Vickie Ott, 1685 Monte Vista Drive, passed out a handout to the board and was against the application.

Shirley Nelson, 1605 Monte Vista Drive, was against the application.

**APPLICANT
REBUTTAL**

Gilchrist said they were not planning on street lighting, but there will be lighting at all the spots. As far as the rest of the concerns they planned to meet all the requirements of subdivision and zoning.

**STAFF
REBUTTAL**

Hogle said staff was aware of the concerns of the public through the process which had been voiced at the meeting. The subdivision review criteria were established by state law. It was difficult to resolve the issues voiced with the character of the neighborhood interest. In terms of design and intended function of the facility, they had reviewed the design for traffic that was presented. The regular operations did not entail traffic on Monte Vista Drive or Monte Vista Way. Those roads would only be used in the event of an emergency as an exit. They were not able to control consequential or sub sequential use of those roads by customers. He hoped there was not an adverse effect of traffic on Monte

BOARD DISCUSSION

Vista Drive or Monte Vista Way. The highway impacts had been considered in the review of the application and he went on to explain the characteristics of the highway. There were no adverse comments received by agencies which regulated the highway.

Heim and Hogle discussed location and the issue of power lines over campers.

A member of the public showed the members of the board the location of the power line in relation to the subject property on a map.

Hogle said Doug Peppmeier who drafted the maps was available for questions.

Doug Peppmeier, TD&H Engineering, said the applicant was aware of the power line and explained the issues regarding them. The applicant would have to relocate them because RVs could not be located under power lines.

The board and Hogle discussed if the condition for placing utilities underground was for new lines or existing lines and the consequences of the property being zoned Scenic Corridor but otherwise being unzoned, how the property was reviewed, what was being platted and the process for the platting.

Shellerud and Gilchrist discussed if a design for a privacy fence had been discussed, if the applicant would abide by the condition for a fence, different types of fences considered, if the park would be open year round and if it would turn into a mobile home park in the future.

The board discussed the possibilities of the park becoming a mobile home park in the future.

Hickey-AuClaire, Schlegel and Grieve discussed a public comment which was received from a relative of Schlegel.

Grieve asked Schlegel if he stood to benefit financially from the outcome of the hearing.

Schlegel replied to the negative.

Grieve said there was no conflict of interest.

Schlegel clarified which letter and the fact he was not aware of the comment letter before the hearing.

Grieve relayed the information he had gathered from the County Attorneys concerning conflict of interest.

Hickey-Au Claire addressed Vicki Ott who had asked if the resort would be shut down during the winter why would the applicant have several spaces open during the winter.

Hogle said the general operation was as a seasonal resort in close proximity to Glacier Park. He discussed the factors which related to RV Parks. He was not aware of anything which stated RV parks could not be operational all year around.

Grieve said what the board needed to do was to look at what was before them at this time and if it altered any of the draft findings-of-fact before them. He gave examples to illustrate his point.

Larsen noticed on the variance for paving it was stated the operation would be for five months out of the year. He also said there was good input from the neighbors concerning the application. It was the job of the board to look at the health, safety and general welfare of the public. What they had to decide was if the conditions put on the application addressed those issues raised. If the issues were not addressed, then the board would vote no. If the issues were addressed then the board would vote yes with conditions. He brought up the example of a buffer and explained further.

The board briefly discussed issues which needed to be addressed.

Grieve and the board discussed process.

The board discussed if it was possible to remove lots and proper procedure.

**MAIN MOTION
TO ADOPT F.O.F.
(FPP-13-05)**

Larsen made a motion seconded by Bodman to adopt staff report FPP-13-05 as findings-of-fact.

**BOARD
DISCUSSION**

The board briefly discussed the low lying power line.

**SECONDARY
MOTION TO (Add
F.O.F. #30)**

Heim made a motion seconded by Larsen to add finding-of-fact #30 to state:

30. *Based on public testimony the existing low-lying overhead power line traversing the eastern corner of the property should be removed or re-routed underground for safety reasons.*

**BOARD
DISCUSSION**

The board discussed the location of the power line.

Grieve said the board should tie a finding-of-fact to a criteria of review and gave an example.

The board discussed possible wording of the motion.

ROLL CALL TO
(Add F.O.F #30)

On a roll call vote the motion passed unanimously.

BOARD
DISCUSSION

Hickey-AuClaire and Grieve discussed process with findings-of-fact and conditions.

Larsen suggested a finding on the noise issue raised by public comment from the neighbors.

Larsen and staff discussed how variances were addressed in the staff report and in the process and how to change findings concerning the variances. They discussed the variance on the bike path and the paving variance concerning time of operation.

Staff and the board discussed the hardship of the property in relation to the variances, if they were self-imposed and changes which needed to be changed in the findings-of-fact.

Ms. Gilchrist said the ten spots possibly being open were for what was called seasonal people, which would be ten people coming in and parking for the whole season. She hoped that clarified the question of being open year round for the board.

The board and staff discussed finding #19 which would affect the park being open all year and what findings should be changed if the park was not seasonal.

The board took a 5 minute break.

The board discussed how to address the noise issue, the buffer and when the variances would be discussed.

Grieve and the board discussed how to address the variances and findings.

The board and Grieve discussed at length if the variance for paving met the criteria, if findings needed to be amended and the process which needed to be followed.

SECONDARY
MOTION TO
(Amend F.O.F. #24)

Larsen made a motion seconded by Shellerud to amend finding-of-fact #24 to read:

24. The requested variance appears to meet *some of* the criteria required for a variance to be granted because the variance would only pertain to the roads within the subject property which serve a private business and the roads would be posted for low 5 mph traffic speeds, thus would not be detrimental to the public health, safety, or general welfare or injurious

to other adjoining properties; ~~the hardship is based on the particular type of seasonal land use and the rural setting of its location;~~ granting of the variance would not increase in public costs, now or in the future as the private internal roads would be fully within the boundaries of the RV Park and be privately maintained; the applicable 'Scenic Corridor' zoning only applies to off-premises advertising and placement of cell towers, and; gravel internal roadways would not be inconsistent with the surrounding community character of the rural area and other area parks and campgrounds with roads which are typically not paved.

**BOARD
DISCUSSION**

The board discussed different wording to amend the finding.

**ROLL CALL TO
(Add F.O.F. #24)**

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO (Add
F.O.F. #24a)**

Bodman made a motion seconded by Larsen to add finding-of-fact #24a to read:

24a. *The requested variance from the requirements of Section 4.7.17(a) FCSR should not be approved because the requested variance arises out of the use rather than the physical characteristics of the property, and therefore not all five criteria required for a variance are not met and Section 4.0.11 FCSR requires that all the criteria are met.*

**BOARD
DISCUSSION**

The board and staff discussed proper numbering for the new finding.

**ASK THE
QUESTION**

Schlegel asked the question.

**ROLL CALL TO
(Add F.O.F. #24a)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board and Grieve briefly discussed how the addition of #24a affected #25.

**SECONDARY
MOTION TO
(Amend F.O.F. #25)**

Bodman made a motion seconded by Larsen to amend finding-of-fact #25 to read:

25. Proper legal and physical access can be provided and potential impacts to the primary review criteria are able to be adequately addressed by conditions. ~~If the requested Variance to Section 4.7.17(a) FCSR is approved, the subdivision proposal and preliminary plat would substantially comply with the Flathead County Subdivision Regulations, effective June 1, 2012.~~

**BOARD
DISCUSSION**

None.

**ASK THE
QUESTION**

Schlegel asked the question.

**ROLL CALL TO
(Amend F.O.F. #25)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board and staff discussed what needed to be addressed to add a bike path to the application.

**SECONDARY
MOTION TO (Add
F.O.F. #31)**

Larsen made a motion seconded by Schlegel to add finding-of-fact #31 to read:
31. *The pedestrian/bicycle easement requirements of Section 4.7.19 FCSR are applicable because the subject property is adjacent to a proposed arterial pathway identified on the Flathead County Trail Plan.*

**BOARD
DISCUSSION**

The board and staff discussed how to address the existing building on the property concerning a bicycle path easement.

**ROLL CALL TO
(Add F.O.F. #31)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board and staff discussed process at length.

**SECONDARY
MOTION TO
(Amend F.O.F. #10)**

Shellerud made a motion seconded by Larsen to amend finding-of-fact #10 to read:

10. While the primary access to the RV Park is paved, the applicant has proposed gravel surfaces for the internal roads. The proposal would not adversely impact air quality through generation of dust *because the subdivision roads will be paved. if internal traffic speeds are kept very low as proposed and the applicant adheres to the provisions of the submitted dust control plan because the plan indicates a dust palliative such as magnesium chloride or equivalent would be applied to the internal roads at least once annually at the beginning of the peak summer tourist season.*

**BOARD
DISCUSSION**

The board discussed the reason for denying the variance for paving and the amendments for the related findings.

Gilchrist said the application was similar to an expansion of an RV park heard and approved by the board in a previous hearing, regarding a variance for paving.

Grieve said the subdivision before the board was the one they needed to concentrate on at this meeting.

Gilchrist said precedence had been set.

Hickey-AuClaire said due to point of order, they were unable to converse with Gilchrist unless a member of the board recognized him.

ROLL CALL TO
(Amend F.O.F. #10)

On a roll call vote the motion passed 5-1 with Heim dissenting.

BOARD
DISCUSSION

The board and Grieve discussed if other findings included 'seasonal'.

Hogle suggested a finding which said the board had heard testimony which said there would be year round use.

The board discussed how to word a finding stating the board had heard testimony the business would be used year round.

SECONDARY
MOTION TO *(Add*
F.O.F. #32)

Schlegel made a motion seconded by Heim to add finding-of-fact #32 to read:

32. *The applicant provided testimony indicating the use would not be limited to seasonal use.*

BOARD
DISCUSSION

None.

ROLL CALL TO
(Add F.O.F. #32)

On a roll call vote the motion passed unanimously.

BOARD
DISCUSSION

Grieve brought up finding of fact #14 which regarded mitigating dust and asked if the board wanted to amend it since paving was now required.

Bodman and Hogle discussed what needed to be paved as far as what was required by the subdivision regulations.

Grieve suggested the board look at finding of fact #17 which contained the word 'gravel'.

SECONDARY
MOTION TO
(Amend F.O.F. #17)

Larsen made a motion seconded by Shellerud to amend finding-of-fact #17 to read:

17. The RV park design appears to allow for safe movement of traffic and access to all spaces and provide safe access to public road because the spaces are sized and configured appropriately, and the internal access roads are proposed to comply with the required minimum width

standards for RV parks and would be constructed to meet established County gravel road standards.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Amend F.O.F. #17)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board discussed county road standards and if the application met them.

**SECONDARY
MOTION TO
(Amend F.O.F. #7)**

Hickey-AuClaire made a motion seconded by Schlegel to amend finding-of-fact #7 to read:

7. The proposed access is via US Highway 2 East and the proposed internal traffic lanes appear reasonable for providing effective and safe access for guests and emergency service providers because the proposed widths of the one-way and two-way internal roads comply with the minimum width standards for RV Park roads outlined in Section 4.5.7 FCSR and the design of the proposed gravel internal roadways in compliance with applicable road standards would ensure adequacy for heavy and large vehicles such as RV's and emergency response vehicles.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Amend F.O.F. #7)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire brought up finding of fact #6 which contained the word 'gravel'.

**SECONDARY
MOTION TO
(Amend F.O.F. #6)**

Larsen made a motion seconded by Shellerud to amend finding-of-fact #6 to read:

6. Minimal impacts to the existing transportation network are anticipated because the RV Park is accessed by a paved public highway, an approach permit for the facility entrance onto US Highway 2 can be obtained from the Montana Department of Transportation, an approach permit for the fire access/emergency exit onto Monte Vista Way can be obtained from the Flathead County Road and Bridge Department, and the internal road network would be constructed to applicable County standards for gravel roads.

**BOARD
DISCUSSION**

None.

**ASK THE
QUESTION**

Schlegel asked the question.

**ROLL CALL TO
(Amend F.O.F. #6)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FPP-13-05)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire clarified process with Grieve concerning the variances.

**MAIN MOTION
TO DENY
VARIANCE
REQUEST
SECTION 4.7.19(b)**

Bodman made a motion seconded by Schlegel to recommend denial of the variance request to Section 4.7.19(b) FCSR pertaining to the bicycle/pedestrian easement requirements.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
DENY VARIANCE
REQUEST
SECTION 4.7.19(b)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO DENY
VARIANCE
REQUEST
SECTION 4.7.17(a)**

Shellerud made a motion seconded by Larsen to recommend denial of the variance request to Section 4.7.17(a)

**BOARD
DISCUSSION**

The board and staff discussed if there was a way around requiring the applicant to pave, what the process would be to amend the subdivision regulations and if amended subdivision regulations could help this applicant. They discussed process at length and possible options for the applicant.

Hogle acknowledged Section 4.4.4 which states the applicant could opt to do a midcourse revision to the application. He went on to explain the process.

Grieve and the board continued to discuss in depth options for the applicant.

Staff and the board clarified the reasons the board denied the variances and possible options for the applicant if the variance was denied.

Grieve reviewed process for the board.

Hogle compared the argument for the variance with a previous RV park in the same area heard and approved by the board earlier in the year.

Grieve reviewed process again.

**ROLL CALL TO
DENY VARIANCE
REQUEST
SECTION 4.7.17(a)**

On a roll call vote the motion passed 4-2 with Hickey-AuClaire and Heim dissenting.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FPP-13-05)**

Hickey-AuClaire made a motion seconded by Larsen to adopt Staff Report FPP-13-05 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Hogle asked for clarification of where the power lines discussed earlier were located.

**SECONDARY
MOTION TO (Add
CONDITION #25)**

Hickey-AuClaire made a motion seconded by Larsen to add Condition #25 to read:

25. *The existing low-lying overhead power line traversing the eastern corner of the property shall be removed or re-routed underground.*

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Add
CONDITION #25)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hogle and the board briefly discussed a condition drafted by Hogle concerning the bicycle path.

**SECONDARY
MOTION TO (Add
CONDITION #26)**

Larsen made a motion seconded by Bodman to add Condition #26 to state:

26. *A pedestrian/bicycle path easement shall be shown on the face of the final plat along the property boundary adjacent to US Highway 2 excluding areas occupied by existing structures.*

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Add
CONDITION #26)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Grieve suggested replacing condition #18 with something more appropriate.

The board and staff discussed options for either different wording or striking condition #18.

**SECONDARY
MOTION TO
(Strike
CONDITION #18)**

Larsen made a motion seconded by Bodman to strike Condition #18.

- ~~18. The following statements shall be placed on the face of the Revised Preliminary Plat:~~
- ~~e. A dust palliative shall be applied to the internal road system annually prior to the peak operation season.~~

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Strike
CONDITION #18)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board discussed possible wording for condition #6 which contained the word 'gravel'.

**SECONDARY
MOTION TO
(Amend
CONDITION #6)**

Bodman made a motion seconded by Shellerud to amend Condition #6 to state:

6. The internal access road shall be designed and constructed in accordance with the Flathead County Road and Bridge Department's "Minimum Standards for Design and Construction", as applicable to paved roads ~~for the paved entrance portion and as applicable to gravel roads~~ for the internal roads. Construction plans and "As-Built" drawings for all roads shall be designed and certified by a licensed engineer and provided to the Road and Bridge Department prior to Revised Preliminary Plat. [Sections 4.7.16 and 4.7.17 FCSR]

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
(Amend
CONDITION #6)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board discussed conditions which were similar.

The board and Hogle discussed if a condition requiring a fence was appropriate, where the fence would be located, if a buffer was needed or fence, what type of buffer would be appropriate, rules for noise for the park and the difficulty of enforcement after final plat. They continued to talk about the proximity of the camp sites to the existing houses, requirements which were established for RV parks and the pros and cons of the requirements.

Grieve reiterated the board had the ability to condition the application as they saw fit, given the criteria.

Larsen said what could have been done, given input from the neighbors, was the lay out of the park could have allowed more space around the perimeter close to the neighbors.

The board discussed their options concerning placing a larger buffer next to the neighbors.

The board and Hogle discussed if there were any rules for setbacks from property lines.

Grieve said the board wanted to make sure the conditions were based on findings of fact. They did not have anything too substantial in the findings regarding the buffer, however they were still charged with giving a recommendation to mitigate based on public safety. He reviewed what the

responsibility of the board included and the restrictions of staff. He explained the relationship between findings and conditions again.

Hickey-AuClaire read finding of fact #13 regarding impacts to adjacent properties.

The board clarified they were talking about a buffer and if it was big enough.

Grieve said he was offering defensibility for potential problems in the future while trying to let the board do its job.

Heim said the position to projects that he had heard for the last six years was always that someone was against the project because they did not want anything next to them because they had moved to the area for the solitude, peace and quiet. The neighborhood was not nice and quiet, it was highway frontage. It was unzoned and if people who had lived there for years and years wanted to keep it the same, they should have zoned the area. It has happened all over the valley. Zoning was not so bad overall. It was a good place to build an RV Park. Highway issues were always a problem. The issues were not fixed before they became a problem. He did not think the park would not be that noisy. He didn't have a large RV but the ones he had been around were pretty quiet.

The board discussed the fact that generators were not usually run if there was power available.

Bodman and Gilchrist discussed what type of RV fit into the shorter spaces and if there was a way to make the sites shorter without impacting what RVs could fit into them.

The board discussed how deep the buffer was behind the lots now, how noise would affect the neighbors and what could be done to mitigate sound.

Hogle refreshed the board's memory on the complexity of the noise issue which was considered on a recent subdivision application concerning a recreational water ski lake.

Grieve reviewed what the board had already adopted as a finding-of- fact on finding #13.

The board discussed if a condition needed to be drafted for a buffer or fence.

Hickey-AuClaire and the Gilchrists discussed their intention on the height of the fence which was six to eight feet, how far the houses were from the property line and the enforcement of quiet hours and check in and check out hours.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FPP-13-05)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed for the audience the process the application would follow from this point on. She asked the board, given the lateness of the hour, if they wanted to continue to hear the new business item since it was relevant to issues the planning office was dealing with at this time.

The board decided to continue with the meeting.

OLD BUSINESS

None.

NEW BUSINESS

The board held discussion with the planning director regarding placement of private land uses such as shooting ranges, motocross courses, multi-party gardens, weddings, airstrips, etc.; when these uses are not open to the public, are only for private use by landowner's family and friends, and do not meet the definition of "Business or Commercial Use" per Section 2.01.020(13) of the Flathead County Zoning Regulations.

Grieve spoke at length about the history of issues with Ten Arrows Ranch and the resulting public comment tonight which helped precipitate the stated discussion item under new business. He stated the difficulties with the determination that friends and family could be married on the property with no money changing hands.

There was a much broader interpretation issue which was impacts being the same whether money had changed hands or not. He gave examples such as shooting ranges, motocross riding, multiple party gardens, weddings, air strips and dump trucks which are parked at residences at night. If it was just for personal use, it was not a zoning violation. He described the process which complaints followed and how they were determined to be a zoning violation or not.

He explained his reasoning in bringing up this issue, which was to refer to the board for guidance on the issue and talk about different ways to deal with the issue of personal use of property. He described what he had usually done, which was to take a more conservative approach to the situations.

The board discussed the difficulties with making determinations on the issues and possible alternatives.

Grieve summarized his conversation with Kalvig who basically stated determinations should be taken on a case by case basis.

Bodman said there was not a bright line test for the issues and tests would have to be developed. He felt it was not appropriate to develop the tests unless it was a countywide issue. If it wasn't a countywide issue, it didn't warrant developing a test.

Grieve said these issues were on the list for the board to work on during the zoning regulations update workshops. The broader issue of what constitutes personal use stymied him; it would be hard to pin down what was a personal use versus commercial use. He gave examples of the difficulty of the situations.

The board and Grieve discussed nuisance laws briefly.

Grieve and the board continued to discuss if there were different alternatives to determining personal use of property.

Kalvig said he was confused by Grieve's fixation on determining business or commercial use of property. He didn't think that was the standard Grieve should be looking at. He hoped the board would not give guidance that as long as that element was not there, there was nothing Grieve could do. The second point was his client, and the people who commented during public comment, would be disappointed if the way things ended up was they had a neighbor violating zoning by doing something which was not allowed by zoning law but was still allowed to continue because money was not exchanging hands. He felt something was broken in the county. In one instance, the county could do something and in the other, they could not because the property owner was not accepting a check.

Larsen and Kalvig discussed if Larsen's daughter's friend wanted to get married at his house then that would be a violation.

The board and Grieve discussed permitted uses in the SAG-5 zoning.

Grieve explained the process the planning office had followed to investigate complaints against the Ten Arrows Ranch, enforcement which had followed and other examples of investigations and enforcements. He had no ability to say one wedding was ok but five was not. All he had was the evidence of a land use zoning violation. He said in the past the office had accumulated 168 enforcement files in the office. The reason was because no one was willing to tackle these difficult questions. They started to work with the Sheriff's Office and County Attorney's Office and started to investigate reasonable suspicion, probable cause, and give alleged violators 30 days to comply. Once those concepts were explored, it was learned that you need evidence of something.

Once you have evidence it can be said what you have evidence and it could be determined if the use is commercial or residential. He gave examples of uses which were permitted and not permitted in different zoning determinations and how those uses permitted or not permitted were determined, such as taking a picture of a tractor working on property on which agricultural uses were not permitted. A lot of people were upset by the determinations. He gave examples of a motocross track next door. Zoning, as it exists in Flathead County, interpreted in a conservative manner, in order to not be arbitrary, you needed to rely on something. It was the best he could do right now.

The board encouraged Grieve to continue as he had.

The board and Grieve discussed the annoyance of having one wedding after another next door to them, what could be done regarding the number of weddings if the property was unzoned, if Grieve had any evidence to the contrary that Ten Arrows Ranch was not going to accept payment for the weddings planned in 2014, what zones wedding facilities were allowed in, the differences between high impact recreational facilities and low impact recreational facilities, the history of what had happened with the application for a Conditional Use Permit which led to its withdrawal and other uses which the office received complaints on.

Grieve described other situations which were similar including a motocross track in the West Valley area.

Bodman was involved in a case with similarities which a civil nuisance lawsuit helped to remedy the situation.

The board discussed briefly the pros and cons of a civil nuisance lawsuit.

Grieve said the outcome was that this issue was on the board's radar; they could think about it, if they wanted to work on it they could do so at a workshop. He suggested working on it in a way that the neighbors affected by these situations could come in at a workshop and voice their concerns. Both sides of the issue could be heard and dealt with. It was an issue that consumed a tremendous amount of energy in the office especially when trying to do enforcement properly.

The board discussed getting the paving requirements for an RV park in the regulations, the need for all the criteria to be met for a variance, the rules for a variance and options for the commissioners concerning the applications.

ADJOURNMENT The meeting was adjourned at approximately 12:15 am December 12, 2013 on a motion by Schlegel. The next meeting will be held at 6:00 p.m. on January 8, 2014.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 2 /12/14*